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# U.S. National Contact Point for the OECD Guidelines for Responsible Business Conduct



## Final Statement

Specific Instance between International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) and Cargill Incorporated regarding operations in Turkey

**Office of the U.S. National  
Contact Point**

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## **Executive Summary**

On August 29, 2018, the U.S. National Contact Point (U.S. NCP) for the OECD Guidelines for Multinational Enterprises (the Guidelines) accepted the Specific Instance<sup>1</sup> and offered mediation between the parties – International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers’ Associations (IUF) and Cargill, Incorporated (Cargill) – regarding operations in Turkey. After thorough review of information shared by both parties, the U.S. NCP offered mediation services to assist the parties to develop a mutually agreed upon resolution to the issues related to Cargill’s implementation of the OECD Guidelines regarding its operations in Turkey. IUF and Cargill accepted the offer of mediation under the auspices of the U.S. NCP and a mediation team from the Consensus Building Institute.

IUF and Cargill participated in multiple pre-mediation exchanges. While the parties showed a desire to have an exchange on key issues of mutual concern, they were ultimately unable to bridge their differences as to what the mediation agenda should entail. The U.S. NCP encourages the parties to continue a dialogue where appropriate, and stands ready to consider future requests for mediation by the parties. With this Final Statement, the U.S. NCP brings this Specific Instance to a close. The U.S. NCP’s actions regarding this Specific Instance were not a determination on the merits of the claims presented, but rather an offer to facilitate neutral, third-party mediation or conciliation to assist the parties to voluntarily, confidentially, and in good faith, reach a cooperative resolution of their concerns.

### **Substance of the Specific Instance**

On August 21, 2018, IUF, a global union federation, submitted a Specific Instance to the U.S. NCP alleging conduct inconsistent with Chapter IV, Human Rights, and Chapter V, Employment and Industrial Relations, of the [OECD Guidelines for Multinational Enterprises](#). The submission involved conduct by Cargill through its operations in its Bursa-Orhangazi and Balikesir facilities in Turkey.

The allegations in the Specific Instance concern dismissals that took place in April 2018. IUF asserted that Cargill Turkey responded to workers seeking to exercise their rights with dismissals and attempts to persuade workers not to participate in a union. IUF claimed Cargill, Incorporated, the parent company, violated the Guidelines when Cargill Turkey dismissed workers allegedly for union activity with the intent of preventing or discouraging other employees from exercising their right to freedom of association. IUF asserted that these dismissals constituted violations of the human rights set out in the Guidelines.

Specifically, IUF cited 2015 and 2018 decisions by the Supreme Court in Turkey, which stated that seven employees were dismissed by Cargill Turkey management at the Bursa-Orhangazi facility in 2012, 2014, and 2015 solely due to their union activity. On April 17, 2018 another 14 employees were dismissed – allegedly because they exercised their freedom of association and chose to join a union and/or participate in union-related activities.

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<sup>1</sup> See Annex for information about this process.

IUF claimed that Cargill management stated that the dismissals were the result of reduced production quotas imposed by the Turkish government. IUF asserted that the Bursa-Orhangazi facility was not yet impacted by the government-mandated quotas and was still at full production capacity at the time of the dismissals. IUF asserted that 90 percent of the dismissed employees did not work in departments directly impacted by the reduced sugar quota, and the majority of remaining workers at the plant continued to work overtime and through national holidays despite the quota. IUF further alleged that the 14 dismissed workers had positive performance records and were dismissed because of their union activity after Tekgıda-İş, an affiliated union of IUF, applied for certification.

IUF asserted in May 2018 that IUF leadership and at least eleven of IUF's union affiliates attempted to inform Cargill Turkey of these allegations, and requested reinstatement of the dismissed workers with full back pay, as well as Cargill Turkey's cooperation with Tekgıda-İş to ensure workers' rights to freedom of association would be upheld. In February 2019, IUF submitted a clarification letter, amplifying its original complaint to include the assertion that Cargill should remediate adverse impacts of its perceived failure of human rights due diligence by reinstating the 14 dismissed workers, and taking concrete steps to ensure an environment in which all Cargill employees can effectively access their human rights.

IUF claimed that Cargill Turkey had not addressed the allegations or provided for their remedy despite being informed of them, and requested the U.S. NCP facilitate mediation between IUF and parent company Cargill to address the alleged harms.

### **Cargill's Response**

On April 18, 2019 Cargill responded in writing to the initial submission and denied that it selected the affected employees because of their union affiliation. In the letter, Cargill stated that the allegations raised by IUF were unsubstantiated, inaccurate, and incomplete. Cargill asserted that the issues raised did not lend themselves to a mutual resolution and did not merit further consideration by the U.S. NCP. Cargill stated that the affected employees had been released as part of business reorganization, and that the reorganization impacted 16 employees. Cargill also stated that the reorganization was related to a reduction in the Turkish government's national sugar quota, and not because of any affiliation with Tekgıda-İş. Cargill asserted that two of the affected employees were members of management, and, therefore, were not likely members of a union. Cargill indicated that production did temporarily increase after the dismissals because a customer placed an unexpected order, but sales and production continued to decline following the quota reduction. Cargill stated Cargill Turkey closed the Orhangazi plant for three weeks after the order was filled due to the production decline. Cargill asserted four main points in its response:

- The Specific Instance was unsubstantiated because Cargill Turkey dismissed the workers as a result of the sugar quota reduction and not the workers' alleged union affiliation. Turkish law mandates that union membership is confidential, and Cargill Turkey did not and does not keep a record of union membership among its employees. Although the dismissed workers received raises in previous years, the rates for these raises were below the plant average because the dismissed workers did not perform as well as their peers.

- IUF sought a remedy that Cargill Turkey could not provide, or if provided would have adversely impacted other employees at the plant. There were no available positions in the Orhangazi plant to offer because the plant was running at one-third capacity. Reinstatement would have required terminating existing employees that, hypothetically, also could have been union members.
- Negotiations with IUF over the 14 employees would have been misplaced because neither Tekgıda-İş nor IUF represented the employees under Turkish law. Under the Guidelines, Cargill Turkey's first obligation was to comply with domestic law, and Tekgıda-İş's application for union certification had been rejected by the Turkish Ministry of Labor and Social Security. Any collective bargaining agreement reached with an uncertified union would be void according to the law.
- The U.S. NCP should decline to provide its good offices because its services would not have added value beyond the civil proceedings already in motion over the same issues. IUF requested reinstatement for 14 of the dismissed employees with full back pay. Reinstatement would not be a viable option and the issue of back pay was at the time pending before the Turkish labor authorities, given lawsuits filed on behalf of 14 dismissed employees. In effect, there was no space for the U.S. NCP to facilitate a different resolution or add to parallel proceedings already filed in a Turkish court.

### **U.S. NCP Decision**

After thorough review of information provided in writing and in discussions with both parties, the U.S. NCP accepted the Specific Instance and determined that the issues raised merited further consideration under the Guidelines, in its Initial Assessment of August 29, 2019.

The U.S. NCP offered mediation services to assist the parties to undertake a dialogue to seek a mutually agreed upon resolution of issues related to Cargill's implementation of the OECD Guidelines, and IUF and Cargill both accepted the U.S. NCP's offer of mediation. The parties had several pre-mediation intake calls with the U.S. NCP and professional mediators from the Consensus Building Institute (CBI). As part of this intake process, CBI, the Office of the U.S. NCP, and both parties agreed that mediation would not be fruitful given the divergence of views between the parties' perspectives on several core issues of scope, including why 14 of the impacted employees were dismissed and the potential remedy available.

The Office of the U.S. NCP and CBI held multiple proactive calls with representatives from IUF and with representatives from Cargill. In the view of the US NCP, the parties were unable to come to an agreed agenda for a mediation on the issues raised. Nevertheless, several benefits resulted from engaging substantively with both parties in preparation for mediation:

- Cargill believes the process improved communications between Cargill's U.S. offices and Cargill Turkey.

- Cargill Turkey has taken measures to see that Cargill’s Guiding Principles, which are presented to employees upon hire, are also available to all of its employees, both online and in its Turkish facilities.
- Cargill has taken measures to see that relevant company policies are available electronically in Turkish.
- Cargill Turkey is working on ways to enhance awareness among its employees of industrial relations issues and its global grievance channels through HR communications and other mechanisms.
- Cargill Turkey will continue to improve its restructuring program.
- IUF cited that it learned benefits of:
  - The importance of establishing clarity from the outset of the process, by all parties, on the issues addressed in the Specific Instance and the scope of a proposed mediation in light of the specific remedy sought;
  - The need for the Specific Instance process to address possible gaps between national law and international standards in the context of remedy; and
  - Increased discussion of the practical application of the Guidelines and the ILO jurisprudence referenced in the Guidelines.

### **Recommendations**

While the parties were unable to come to an agreed scope of a mediation on the issues raised in this Specific Instance, the U.S. NCP hopes that the process led to greater understanding of the Guidelines and will result in more expedient recognition and resolution of such issues if they arise in the future. Below are a recommendation and a reminder from the U.S. NCP based on the Guidelines and the issues raised in the Specific Instance:

- **Ongoing Collaboration:** The U.S. NCP recommends that the parties to the Specific Instance – IUF and Cargill – remain open to continue to communicate about potential issues regarding implementation of the Guidelines. Potential items for such communication could relate to human rights, labor rights, and due diligence.
- **Future Requests for Mediation:** The U.S. NCP stands ready to consider future requests for mediation by the parties should the parties return with new information, and the Office of the U.S. NCP determines that mediation could further the Guidelines.

## **Annex: Background Information about the U.S. NCP Specific Instance Process and Outcome of the Initial Assessment**

### **I. Context and Background on the U.S. NCP**

The OECD Guidelines for Multinational Enterprises (MNEs) are voluntary, non-binding recommendations for responsible business conduct in a global context. The Guidelines are addressed to MNEs operating in or from the territories of governments adhering to the OECD's Declaration on International Investment and Multinational Enterprises, of which the Guidelines form one part. Adhering governments have committed to a) encouraging their MNEs to follow the Guidelines in their global operations, and b) appointing a national contact point (NCP) to assist parties in seeking a consensual resolution to issues that may arise under the Guidelines.

As a part of its function, the U.S. NCP addresses issues arising in relation to implementation of the Guidelines, raised in the form of a Specific Instance, about the business conduct of an MNE operating in or headquartered in the United States. The office handles such issues in accordance with procedures available at: [www.state.gov/usncp](http://www.state.gov/usncp) and in the [U.S. NCP Guide](#). Further background on U.S. NCP procedures and policies, and on the Initial Assessment process, can be found in these documents.

Under U.S. NCP procedures, acceptance of the Specific Instance – including a finding that the issues raised by IUF merit further consideration – does not indicate the U.S. NCP considers Cargill to have acted inconsistently with the Guidelines, but rather that the U.S. NCP considers it appropriate to facilitate a discussion between the parties of the issues raised. For Cargill's part, a decision to participate in this process would not imply any admission of conduct inconsistent with the Guidelines.

Mediation or conciliation is a voluntary step, providing an opportunity for a neutral third party to assist the parties to reach their own resolution of concerns. In mediation, the parties are responsible for arriving at their own solution, and the process is designed to create an environment for cooperative problem-solving between the parties. If the parties can reach an agreement through mediation or other means, the U.S. NCP would consider requests by the parties to follow up on implementation. The U.S. NCP hopes that its offer of voluntary mediation can assist in the parties further understanding each other and be a neutral venue for resolving the issues raised.

### **II. Conducting the Initial Assessment**

Per the Guidelines procedures, upon receiving a Specific Instance, the U.S. NCP conducts an Initial Assessment. The Initial Assessment does not determine whether the company has acted consistently with the Guidelines, but rather is a process to determine whether the issues raised merit further examination in the form of voluntary mediation. Per the Procedure Guidance, the Initial Assessment is conducted based on:

- Identity of the party and its interest in the matter
- Whether the issue is material and substantiated

- Likely link between the enterprise's activities and the issue raised
- Relevance of applicable law and procedures, including court rulings
- Treatment of similar issues in other domestic or international proceedings
- Contribution of the specific issue to the purposes and effectiveness of the Guidelines

The U.S. NCP contributes to the resolution of issues that arise relating to implementation of the Guidelines raised in Specific Instances in a manner that is impartial, predictable, equitable and compatible with the principles and standards of the Guidelines. The U.S. NCP works to facilitate dispute resolution in a confidential, efficient, and timely manner.

### **III. Outcome of the Initial Assessment**

Per the Guidelines, the U.S. NCP took the following points into account when considering whether the issues raised merit further consideration.

#### *a. Identity of the party and its interest in the matter*

IUF is the global union federation for trade unions representing workers in the food, agricultural, hotel, restaurant, catering, tobacco and allied sectors. Its members represent Cargill workers throughout the globe and across the many activities in which the company engages.

Cargill is an American privately held global corporation based in Minnetonka, Minnesota, and incorporated in Wilmington, Delaware. According to Cargill's website, it is the largest privately held corporation in the United States in terms of revenue and combines experience with new technologies and insights to bring food, agricultural, financial, and industrial products to customers in more than 125 countries. Cargill is a team of 155,000 professionals in 70 countries connecting the worlds of food, agriculture, nutrition, and risk management for more than 150 years. Cargill develops products to meet consumer demand, advance nutrition, food safety, and sustainability. Cargill has expressed a commitment to productive labor relations.

The U.S. NCP is satisfied that IUF was able to provide information about the Specific Instance and has an interest in the issues raised.

#### *b. Whether the issue is material and substantiated*

IUF has provided information in the form of letters and annexes in its submission alleging Cargill's failure to execute due diligence with respect to Cargill Turkey when it comes to the labor and human rights chapters of the Guidelines.

The U.S. NCP, per its established procedures, makes no determination whether a violation of the Guidelines has taken place. The U.S. NCP asserts that the issues merit further consideration and thus offers voluntary mediation services to the parties.

*c. Link between Cargill's activities and issues raised*

The Specific Instance discusses the link between Cargill and its Turkish subsidiary, Turkey Cargill. According to Cargill's website, Cargill has been active in Turkey since 1960 through a local partnership agreement and commenced trading as Cargill in 1986. The company now has more than 600 employees in seven locations in Turkey.

According to Cargill, the Turkish government announced in March 2018 that it would cut Cargill Turkey's annual sugar product production quota by half. The government implemented that reduction on September 1, 2018. In February 2019, the Turkish government announced that Cargill Turkey's quota would be halved again. The government ultimately implemented the second reduction in September 2019.

*d. Relevance of applicable law and procedures, including court rulings*

Some of the issues raised in this case have been considered in cases regarding the dismissed employees in Turkish courts. The issues raised in the national courts relate to national law and seek additional remedy than those raised in this Specific Instance, which concern the international principles and standards set out in the Guidelines.

The Turkish court of appeals found that the four workers failed to meet the burden of proof that their terminations were linked to union activities. The court also found that these four terminations were deemed invalid on the grounds that normal procedures were not followed and there was no economic rationale (business requirements) for the dismissals.<sup>2</sup> The translation of the court verdict states that Cargill failed to prove that the decision to dismiss the workers was made through objective criteria, and it was unclear who made the evaluation to dismiss them and how. For those reasons, the court ordered reinstatement with the option of Cargill paying five months gross wages in lieu of reinstatement. Cargill has chosen to pay the employees the severance.<sup>3</sup>

The Turkish court of appeals later ruled in favor of the remaining workers and found there was anti-union discrimination in light of insufficient evidence that the workers' terminations were unavoidable. The court ordered Cargill Turkey to reinstate the workers or pay them additional severances,<sup>4</sup> and Cargill has chosen to pay the required severances.

The U.S. NCP is not aware of any applicable law or procedures that would have weighed against offering its mediation service in this case. The U.S. NCP is satisfied that its offer of mediation would not have had any significant effect on processes that are underway.

In its Initial Assessment to the parties, the U.S. NCP acknowledged that mediation specific to the dismissed Cargill Turkey workers may duplicate existing efforts because there was an ongoing process in Turkish courts examining the specific workers' grievances. The

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<sup>2</sup> The U.S. NCP was working with a translated copy of the judicial verdict.

<sup>3</sup> Two of the impacted employees accepted the original severance offered to them and did not pursue legal action.

<sup>4</sup> The U.S. NCP relied upon a translated verdict of one of the workers.

Office of the U.S. NCP was ready to assist the parties on the issues of the specific dismissed workers in Turkey if both parties requested and agreed to it.

*e. How similar issues have been, or are being treated in other domestic or international proceedings*

The U.S. NCP is aware of recent decisions in Turkish courts between the dismissed employees and Cargill Turkey. On July 10, 2019, the provincial Turkish labor court ruled in favor of the dismissed employees and ordered reinstatement and/or compensation. Cargill appealed this decision. Those cases were finalized in early 2020.

*f. Whether the consideration of the Specific Instance would contribute to the purposes and effectiveness of the Guidelines*

The U.S. NCP considered that its mediation could have played a positive role in assisting the parties to facilitating a dialogue on the issues raised in the Specific Instance and reaching a mutually acceptable solution. Consistent with the criteria in the U.S. NCP procedures for Specific Instances (as established in the Guidelines themselves), the U.S. NCP determined in the course of its Initial Assessment that the matters raised merited further consideration and were relevant to the implementation of the Guidelines.

*The Guidelines and Leverage*

The Guidelines have this to say about supply chain responsibility:

“If the enterprise identifies a risk of contributing to an adverse impact, then it should take the necessary steps to cease or prevent its contribution and use its leverage to mitigate any remaining impacts to the greatest extent possible. Leverage is considered to exist where the enterprise has the ability to effect change in the wrongful practices of the entity that causes the harm.” (Commentary on General Principles, p.19)

This supply chain responsibility is further clarified in paragraph 20 of the Commentary on General Principles:

“Meeting the expectation in paragraph A.12 would entail an enterprise, acting alone or in co-operation with other entities, as appropriate, to use its leverage to influence the entity causing the adverse impact to prevent or mitigate that impact.”

Paragraph A.12 of the Guidelines states that enterprises should “Seek to prevent or mitigate an adverse impact where they have not contributed to that impact, where the impact is nevertheless directly linked to their operations, products or services by a business relationship. This is not intended to shift responsibility from the entity causing an adverse impact to the enterprise with which it has a business relationship.”

From this passage, as well as the official commentary accompanying it, it is clear that enterprises are responsible for other entities in the same supply chain even while those entities

remain responsible for their own actions. These two separate responsibilities do not contradict each other. The business partner would be responsible for any labor rights violations it commits. That, however, does not absolve the company contracting with it from the responsibility to do what it can to prevent or mitigate such abuses, and ensure that the contracting arrangement does not reduce workers' ability to exercise their rights. The expectation for due diligence flows from this responsibility.

It is also clear that the enterprise should use its leverage to prevent or mitigate adverse impacts. (Guidelines, Commentary on General Policies, paragraphs 19-20.) Leverage is a complex issue. How much leverage a company may have in any given supplier relationship depends upon all the variables in play in that specific situation. In many cases, a company may not be aware of the full extent of (or the limits to) its leverage until it attempts to wield that leverage in that particular case. However, the Guidelines also imply that a lack of leverage does not justify inaction.

The Guidelines recognize that there are practical limitations on the ability of enterprises to effect change in the behavior of their suppliers, related to, among other issues, product characteristics, the number of suppliers and the structure and complexity of the supply chain. Nonetheless, enterprises may influence their suppliers, such as through contractual arrangements, voting trusts, and participation in industry-wide collaborative efforts with other enterprises with which they share common suppliers. (Guidelines, Commentary on General Policies, paragraph 21.) The UN Guiding Principles on Business and Human rights refer to this as increasing leverage. Companies may wish to prioritize business relationships based on severity and likelihood.

#### **IV. Due Diligence**

The principles of effective due diligence are elaborated in the OECD's Due Diligence Guidance for Responsible Business Conduct ("hereafter "OECD Due Diligence Guidance"), which are non-binding recommendations applicable to all sectors and adopted in May 2018. While a Specific Instance cannot be submitted on the basis of the OECD Due Diligence Guidance itself, the OECD Due Diligence Guidance does promote a common, understanding of the characteristics and processes of due diligence under the Guidelines and therefore is a useful reference and tool.

The Guidelines recommend that companies use due diligence to identify, prevent and mitigate actual and potential adverse impacts, as well as account for how these impacts are addressed. Due diligence is a flexible, risk-based process and not a specific formula for companies to follow. It requires companies to know and describe the potential effects their operations could have on local communities, and on that basis take steps to address the risk. The fundamentals of the concept are familiar to companies working with risk management and management systems. The Guidelines acknowledge that due diligence can be included within broader enterprise risk management systems, provided that it goes beyond simply identifying and managing material risks to the enterprise itself to include the risks of adverse impacts related to matters covered by the Guidelines. Companies implementing due diligence processes are much better equipped to handle actual and potential adverse impacts. Additionally, companies that fail

to undertake sophisticated due diligence processes run the risk of complaints from different entities, such as civil society, under various grievance mechanisms. The due diligence concept as described in the OECD Guidelines is consistent with the UN Guiding Principles on Business and Human Rights. Due diligence is described in paragraph 14 of the Commentary on General Policies as:

“For the purposes of the Guidelines, due diligence is understood as the process through which enterprises can identify, prevent, mitigate and account for how they address their actual and potential adverse impacts as an integral part of business decision-making and risk management systems. Due diligence can be included within broader enterprise risk management systems, provided that it goes beyond simply identifying and managing material risks to the enterprise itself, to include the risks of adverse impacts related to matters covered by the Guidelines. Potential impacts are to be addressed through prevention or mitigation, while actual impacts are to be addressed through remediation. The Guidelines concern those adverse impacts that are either caused or contributed to by the enterprise, or are directly linked to their operations, products or services by a business relationship, as described in paragraphs A.11 and A.12.”

#### **IV. Mediation and Interagency Working Group**

Mediation or conciliation is a voluntary step, providing an opportunity for a neutral third party to assist the parties to reach their own resolution of concerns. In mediation, the parties are responsible for arriving at their own solution, and the process is designed to create an environment for cooperative problem-solving between the parties. In providing mediation services, the U.S. NCP utilized the expertise of objective and neutral mediators from the Consensus Building Institute (CBI). CBI is a not-for-profit organization founded in 1993 by leading practitioners and theory builders in the fields of negotiation and dispute resolution. CBI’s mediators bring decades of experience brokering agreements and building collaboration in complex, high-stakes environments – and possess the deep understanding required to tackle negotiation and collaboration challenges in our practice areas. Per its procedures, the U.S. NCP consulted with and received input from its U.S. government experts and the Turkish NCP throughout the process.